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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
**ORIGINAL
FILE**

In re Application of

CENTRAL FLORIDA EDUCATIONAL FOUNDATION,
INC.
Union Park, Florida

et al., including the
application of

HISPANIC BROADCAST SYSTEM, INC.
Lake Mary, FL
For Construction Permit, New
Noncommercial, Educational FM Stations

) MM Docket No. 92-33

) File No. BPED-881207MA

) File No. BPED-891128ME

To: Administrative Law Judge Edward J. Kuhlmann

REPLY

Hispanic Broadcast System, Inc. ("Hispanic"), by its counsel, herewith submits its reply to the OPPOSITION TO MOTION TO ENLARGE ISSUES filed by Central Florida Educational Foundation, Inc. ("Central Florida") in the above-captioned proceeding. In support whereof, the following is stated:

1. Hispanic filed its motion to enlarge issues, seeking site availability and site suitability issues against Central in light of the fact that the site co-owner, Channel 6, has made it clear that the site will not support an additional antenna. Channel 6 has expressed a willingness to permit the applicants to diplex, utilizing the Channel 6 antenna. However, Central Florida's original proposal was to place an additional antenna on the tower. Only on the B cut-off date did Central Florida amend to propose to diplex.

2. In response to the motion, Central Florida submitted a

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verified statement from the Chief Engineer of Channel 6 in which he states: "I gave Mr. Hoge permission to specify the WCPX-TV tower in CFEF's application. No diplexing was discussed at that time."

3. Based on the above verified statement, it would appear that no site availability issue is warranted against this applicant. Channel 6 gave Central Florida permission to specify this site. Therefore, the request for a site availability issue is hereby withdrawn (requested issue 1).

4. Nevertheless, the issues should be enlarged to include the site suitability issues (requested issues 2 and 3). Channel 6 has made it clear that the only way that the tower could be utilized is through diplexing. The tower would not hold another antenna. This is not refuted in the Central Florida reply. In fact, Central Florida's original application could not be effectuated because the tower simply could not hold an additional antenna. The proposal was defective up until the B cut-off date when the applicant proposed to diplex.

5. Hispanic wants to make it clear that it is not seeking in any way to impugn the character of Central Florida. Central Florida has stated that it acted in good faith, and Hispanic has no reason to dispute Central Florida's good word or integrity. The point here, simply put, is that Central Florida's original proposal was defective. The tower could not support another antenna. The other applicants to the proceeding were so advised and thus had to seek alternative sites. As a result, Central Florida has obtained a 307(b) coverage preference in this pro-

ceeding. While Central Florida claims that it is entitled to this preference as a result of its "diligence" in obtaining the site, this is not so. It obtained the preference because it had filed a defective application which the other applicants were precluded from doing because they had been advised that the site would not support another antenna.

6. In light of the defective nature of Central Florida's original application, the Commission must determine whether Central Florida's underlying application should be dismissed as defective when filed and, if not, whether Central Florida's upgrade which led to a 307(b) coverage preference should be permitted in the context of the particular facts of this proceeding.

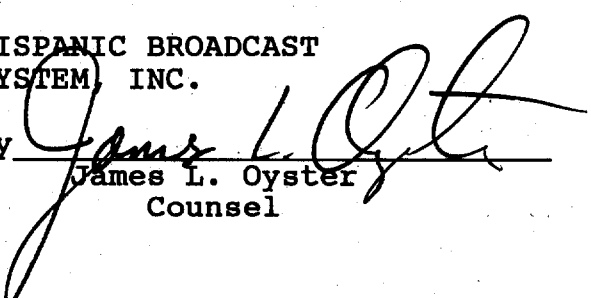
WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the Presiding Judge enlarge the issues to include appropriate site suitability issues.

Respectfully submitted,

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HISPANIC BROADCAST
SYSTEM, INC.

By


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Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing REPLY by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 10th day of August, 1992, to the following:

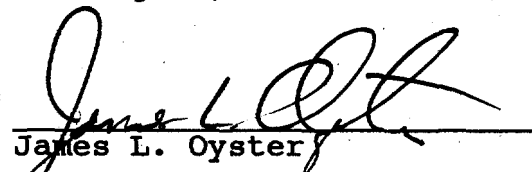
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